

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9882 of 2000

with

CIVIL APPLICATION NO. 12608 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PANDYA GIRISHKUMAR KANAIYALAL

Appearance:

1. Special Civil Application No. 9882 of 2000
Mr. H.C. Patel, Addl. G.P. for Petitioner No. 1
MR PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 21/01/2002

ORAL JUDGEMENT

Heard Mr. H.C. Patel, the Addl. G.P. for the petitioner State and Mr. P.H. Pathak, the learned advocate appearing for the respondent workman. By way of this petition, the petitioner has challenged the award made by the labour court, Himatnagar in Reference (LCH)

No. 604 of 1996 dated 19th August, 1999 wherein the labour court has granted reinstatement with continuity of service and with full back wages for the intervening period. On 20.9.2000, this Court, while issuing rule, has stayed the impugned order in terms of para 13(B) of the petition and has ordered for listing of the matter for final hearing in third week of October, 2000. The ad.interim relief has not been granted by this Court subject to section 17-B of the Industrial Disputes Act, 1947. The respondent workman has filed affidavit in reply in this petition.

The respondent workman has filed civil application no. 12608 of 2001 with a prayer to grant benefits under section 17B of the Industrial Disputes Act, 1947 during the pendency of the present petition. Therefore, both the matters have been taken up for hearing in view of the submission made by the learned Addl. G.P.. Mr. Patel that the main matter can be decided and disposed of by this court as the award in question has been passed by the labour court, Himatnagar in absence of the petitioner. Therefore, in the facts and circumstances of the case and with the consent of the learned advocates for the parties, the main matter itself has been taken up for final hearing today.

In view of these factual aspects, I have perused the award made by the labour court concerned. Before the labour court, reply at Exh. 7 was filed by the petitioner to the statement of claim filed by the respondent workman. Thereafter, the petitioner has remained absent and the respondent has produced the documentary evidence vide Exh. 10 and, thereafter, the respondent was examined before the labour court but no one has remained present on behalf of the petitioner and, therefore, right of the petitioner to cross examine the evidence of the workman has been closed by the labour court. Thereafter, the labour court has examined the only evidence adduced by the workman which was not cross examined by the petitioner side and has, then, passed the award in question with an observation that the respondent workman has proved his case on the basis of the statement of claim as well as the deposition of the respondent against which, except the reply Exh. 7, no other documentary evidence has been produced by the petitioner, though sufficient opportunity was given by the labour court to the petitioner. Therefore, before the labour court, the evidence of the workman has remained unchallenged and uncontroverted and, therefore, according to my opinion, since this is an award made ex parte by the labour court, the petitioner is having an alternative

and equally efficacious remedy under the Industrial Disputes Act (Gujarat) Rules, 1966. As per rule 26-A/B of the said Rules, the labour court is having power to set aside the ex parte award and to grant interim relief against the operation of such ex parte award. Under the said Rules, the labour court is also empowered to condone delay if such an application is filed after the period of limitation prescribed under the law. Therefore, according to my opinion, this petition is not required to be entertained by this Court on merits as no adjudication has taken place on merits before the labour court. Accordingly, without entering into the merits of the matter, it is directed to the petitioner to approach the labour court concerned under Rule 26-A/B of the said Rules. This petition is accordingly disposed of. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Civil Application No. 12608 of 2001 has been filed by the respondent workman with a prayer for grant of the benefits of section 17B of the Industrial Disputes Act, 1947 during the pendency of the main petition. Learned advocate Mr. Pathak appearing for the respondent workman has submitted that according to the provisions of section 17B of the Industrial Disputes Act, 1947, the workman is entitled to get the last drawn monthly wages inclusive of maintenance allowance from the petitioner from the date of the impugned award because the reinstatement has been stayed by this Court by order dated 20.9.2000. In response to this submission made by Mr. Pathak, learned Addl. G.P. Mr. H.C. Patel has submitted that today, the main matter has been disposed of by this court with a direction to the petitioner to approach the labour court concerned under Rule 26-A/B of the said Rules and, therefore, once the main petition itself has been disposed of, question of making payment under section 17-B of the Industrial Disputes Act, 1947 does not arise.

I have considered the submissions made by both the learned advocates. For considering the submissions of both the learned advocates on technical ground, relevant provisions of section 17-B of the Industrial Disputes Act, 1947 are required to be considered. They are, therefore, reproduced as under :

"17-B. Payment of full wages to the workman pending proceedings in higher courts. - Where in any case a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceed

be liable to pay such workman during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court;

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be."

Similarly, this section has been examined by the apex court in case of Dena Bank versus Kirit I. Patel reported in 1997 (2) GLH page 946. Relevant observations made by the apex court in the said decision are reproduced as under in para 22 of the decision.

"As indicated earlier, S. 17-B has been enacted by Parliament with a view to give relief to a workman who has been ordered to be reinstated under the award of a labour court or the industrial tribunal during the pendency of proceedings in which the said award is under challenge before the High Court or the Supreme Court. The object underling the provision is to relieve to a certain extent the hardship that is caused to the workman due to delay in the implementation of the award. The payment which is required to be made by the employer to the workman is in the nature of subsistence allowance which would not be refundable or recoverable from the workman even if the award is set aside by the High Court or this Court. Since the payment of such a character Parliament thought it proper to limit it to the extent of wages which were drawn by the workman when he was in service and when his services were terminated and, therefore, used the words "full wages last drawn". To read words to mean wages which would have been drawn by the workman if he had continued in service if the order terminating his services had not passed since it has been set aside by the award of the Labour Court or Industrial Tribunal would result

in so enlarging the benefits as to comprehend the relief that has been granted under the award that is not refundable or recoverable in the event of the award being set aside it would result in the employer being required to give effect to the award during the pendency of the proceedings challenging the award before the High Court or the Supreme Court without his being able to recover the said amount in the event of the award being set aside. We are unable to construe the provisions contained in S. 17-B to cast such a burden on the employer. In our opinion, therefore, the words "full wages last drawn" must be given their plain and material meaning and they cannot be given the extended meaning as given by the Karnataka High Court in Vishveswaraya Iron and Steel Ltd. (supra) or the Bombay High Court in Carona Sahu Co. Ltd. (supra). "

In para 24 of the said decision, it has been observed by the apex court as under :

"As regards the powers of the High Court and the Supreme Court under Arts. 226 and 136 of the Constitution, it may be stated that S. 17-B, by conferring a right on the workman to be paid the amount of full wages last drawn by him during the pendency of the proceedings involving challenge to the award of the Labour Court, Industrial Tribunal or National Tribunal in the High Court or the Supreme Court which amounts is not refundable or recoverable in the event of the award being set aside, does not, in any way, preclude the High Court or the Supreme Court to pass order directing payment of a higher amount to the workman if such higher amount is considered necessary in the interest of justice. Such a directions would be dehors the provisions contained in S. 17-B and while giving the directions, the Court may also give the direction regarding refund or recovery of the excess amount in the event of the award being set aside. But we are unable to agree with the view of the Bombay High Court in Elpro International Ltd. (supra) that in exercise of the power under Article 226 and 136 of the Constitution an order can be passed denying the workman the benefit granted under S. 17-B. The conferment of such a right under S. 17-B cannot be regarded as a restriction on the powers of the High Court or

the Supreme Court under Arts. 226 and 136 of the Constitution. "

The fact remains that the award in question was made by the labour court concerned on 19th August, 1999 whereas the petition has been filed by the petitioner challenging the award dated 19th August, 1999 on 12th September, 2000 and by granting the interim relief, the award has been stayed by this Court in terms of para 13(B) of the petition and, thus, whole award has been stayed by this Court during the pendency of the petition before this Court. IN view of these facts, the respondent workman is entitled to the relief under section 17-B of the Industrial Disputes Act, 1947. As observed by the apex court in the aforesaid decision, these are the reliefs which cannot be recovered from the respondent workman even if the petition filed by the petitioner is allowed. In such eventuality, such amount is not refundable which is required to be paid by the petitioner on the basis of having mandatory statutory provisions. Therefore, considering all these aspects of the matter, according to my opinion, the respondent workman is entitled to have the last drawn monthly wages inclusive of maintenance allowance from the petitioner from the date of the award 19th August, 1999 till today i.e. 21st January, 2002 as, according to the applicant, he has remained unemployed and has not been gainfully employed from the date of the award till this date. This affidavit has not been challenged by the petitioner and no counter affidavit has been filed controverting such statements made by the workman on oath in the affidavit filed by him.

Therefore, it is directed to the petitioner to pay to the workman the last drawn wages inclusive of maintenance allowance from 19th August, 1999 till 21st January, 2002, within two months from the date of receipt of copy of this order. With these observations and directions, this civil application is also disposed of with no order as to costs.

21.1.2002. (H.K. Rathod, J.)

Vyas